

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

MARILYN ANN PHILLIPS,

Plaintiff,

vs.

FARMERS INSURANCE COMPANY, INC.

Defendant.

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Case No. 17-CV-547-JED-JFJ

DEFENDANT'S MOTION FOR STIPULATION

COMES NOW the Defendant, Farmers Insurance Company Inc., and in support of its Motion for a Stipulation, states as follows:

1. On May 8, 2019 the Plaintiff, Marilyn Ann Phillips, appeared for a deposition limited in scope to her gardening activities and photographs of garden at her home. During the deposition, the Plaintiff was wearing splints on both hands. She testified that gardening causes pain in her thumbs and wrists.

2. The Defendant anticipates that the Plaintiff will wear her splints at trial. There may be testimony from the Plaintiff or her retained expert, Richard Hastings, D.O, that gardening or other activities causes pain or symptoms in her hands.

3. The Defendant requests that the following stipulation be read to the jury during the presentation of evidence to avoid confusion and misleading of the jury:

“The Parties agree and stipulate that the Plaintiff’s symptoms of pain and decreased strength and motion of her thumbs are the result of aging. This is a degenerative process, and is not related to the motor vehicle accident on August 27, 2012. Further, the parties agree and stipulate that the treatment Ms. Phillips received in 2018 and 2019 from David Mokhtee, M.D. and Tulsa Bone and Joint, including the use of the splints, is not related to the accident of August 27, 2012.”

4. As background and support for the Motion, the Defendant shows the Court that the

Plaintiff claims that she suffered carpal tunnel syndrome of both wrists as a result of the automobile accident on August 27, 2012. The claim is contested. The Plaintiff had surgery by Dr. Mokhtee for a right carpal tunnel release on September 19, 2016. She had surgery by Dr. Mokhtee for a left carpal tunnel release on November 28, 2016. On December 8, 2016 the Plaintiff had her final post surgical visit with Dr. Mokhtee. On that date the plan was to followup as needed.

5. On March 7, 2018 the Plaintiff returned to Dr. Mokhtee at Tulsa Bone and Joint with pain associated with a new problem diagnosed as trigger thumb or thumb arthritis. Dr. Mokhtee treated this new problem with injections. The Plaintiff received physical therapy and was fitted with splints.

6. Dr. Mokhtee has testified that the Plaintiff's trigger thumb or thumb arthritis and resulting symptoms are the result of aging. The condition is degenerative and is not related to the automobile accident on August 27, 2012.

7. Accordingly, the parties filed Amended Joint Stipulations (Doc. 54) which included the following in paragraph F:

“The parties stipulate that the treatment Ms. Phillips received in 2018 from Tulsa Bone and Joint/David Mokhtee, M.D. was not related to the motor vehicle accident on August 27, 2012.”

WHEREFORE, the Defendant moves that the Court read the stipulation proposed in paragraph 3 above to the jury during the presentation of evidence at the trial of this matter.

Respectfully submitted,

STEIDLEY & NEAL, P.L.L.C.

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CERTIFICATE OF SERVICE

I, hereby certify that on the 9th day of May, 2019, I electronically transmitted the foregoing document to the Clerk of the Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

Anthony M. Laizure

s/ Robert H. Taylor